

OIL FUND DISBURSEMENT BOARD

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SAMPLE WAIVER REQUEST LETTERS

1.) OUT-OF-SCOPE WORK TO ACCOMPANY REIMBURSEMENT REQUEST

(DATE)

Rep. Robert G. Holbrook, Chairman
Oil Fund Disbursement Board
c/o NHDES Waste Management Division
6 Hazen Dr. P.O. Box 95
Concord, NH 03302-0095
Attn: Timothy R. Denison

Re: (TOWN), (SITE NAME), Request for Waiver of Odb 401.28(b) - Work Scope Approval
(DES NO. #####)

Dear Rep. Holbrook,

On behalf of (SITE OWNER), (APPLICANT/CONTRACTOR) hereby requests a waiver of Odb 401.28(b), which requires that all corrective action work be pre-approved by DES for scope and cost, in accordance with Odb 401.27. Pursuant to Odb 401.40, this waiver is sought under the following circumstances:

1.) A waiver of Odb 401.28(b) is necessary because corrective action work was performed at the site, without pre-approval by DES. Pre-approval could not be obtained because (DESCRIBE THE CIRCUMSTANCES). Specifically (GENERALLY DESCRIBE THE WORK) was performed at a (TOTAL COST) of (DOLLARS). A breakdown of the incremental (time, materials, personnel and equipment) costs for the work is attached to this letter. Although DES did not pre-approve the work, the DES project manager has retroactively agreed that the work was a necessary and reasonable course of action given the site conditions.

2.) In lieu of pre-approval, the owner requests that the Board accept (APPLICANT/CONTRACTOR'S) certification that the work was performed at a reasonable cost commensurate with similar work, performed under similar circumstances, at other fund-eligible sites. This assertion is supported by the detailed breakdown of the costs for the work attached to this letter.

3.) Granting this waiver request would be consistent with the intent of the statute and rules, as the owner is entitled to reimbursement for corrective action costs for work recognized as necessary and reasonable by DES. Further, the incremental costs did not exceed the prevailing market rate for goods and services provided to complete the work and the owner has not benefited from the work other than for the cleanup of (HIS/HER) property to its pre-release condition. Costs for corrective action work performed in accordance with NHDES rules are reimbursable under the provisions of the fund rules.

Attached to this letter, please find a detailed description and a breakdown of the costs for the corrective action work performed without benefit of DES pre-approval, but was otherwise necessary for remediating contamination at the site. We hope that the Board will act favorably on this waiver request. If you have any questions, please call the undersigned at (AREA CODE) (PHONE NUMBER).

Sincerely,

(NAME)
(APPLICANT/CONTRACTOR)

Attachments: Description of Work
Cost Detail
cc: (OWNER)

2.) FORMER OWNER OF AN ACTIVE FACILITY

[DATE]

Rep. Robert G. Holbrook, Chairman
Oil Fund Disbursement Board
c/o NHDES Waste Management Division
6 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095
Attn: Timothy R. Denison

Re: [TOWN], [SITE NAME], Request for Waiver of Odb 401.04(h)(1)
DES Site#[#####]

Dear Chairman Holbrook:

[FORMER OWNER(S)] hereby requests a waiver of Odb 401.04(h)(1), which limits reimbursement eligibility for an "active facility" to the current legal owner. In requesting this waiver, [I or we] certify that [I or we] [am or are], or will be, the former fund-eligible owner[s] of the active petroleum storage facility located at the above-referenced site. Pursuant to Odb 401.40, this waiver is sought due to the following circumstances:

- 1.) A waiver of Odb 401.04(h)(1) is necessary for [FORMER OWNER(S)] to be continuously eligible for reimbursement for corrective action costs incurred after legal transfer of the facility in question. Specifically, [FORMER OWNER(S)] [has or have] an obligation to continue corrective action after the date of legal ownership transfer to [NEW OWNER(S)], pursuant to the provisions of a [TYPE OF LEGAL DOCUMENT]. Under the legal agreement, [FORMER OWNER(S)] [is or are] liable for performing corrective action for releases of petroleum that occurred prior to the date of ownership transfer.
- 2.) In lieu of transferring eligibility to [NEW OWNER(S)], as required under Odb 401.04(h)(1), [FORMER OWNER(S)] requests that the Board accept the attached applicable section(s) of the [TYPE OF LEGAL DOCUMENT]. Said document demonstrates that [FORMER OWNER(S)] [has or have] an obligation to continue corrective action after transfer of facility ownership. Given the legal responsibilities associated with the ownership transfer, there are no other reasonable alternatives available to the parties other than a waiver of Odb 401.04(h)(1).

- 3.) Granting a waiver of Odb 401.04(h)(1) would be consistent with the intent of the statute, as [FORMER OWNER(S)] [is a or are] qualified fund-eligible facility owner[s] who [has or have], or will, incur costs for corrective action recognized as reasonable and necessary by NHDES. Granting a waiver would be consistent with the rules, which specify criteria for reimbursable costs incurred by a current or former facility owner.

Attached to this letter, please find a copy of the provisions of the [TYPE OF LEGAL DOCUMENT] referenced above. [I or we] hope that the Board will act favorably on this request. If you have any questions, please call the undersigned at (AREA CODE (PHONE NUMBER)).

Sincerely,

[NAME]
[REPRESENTING]

Attachment: [TYPE OF LEGAL DOCUMENT]

3.) BACKFILL MATERIAL WEIGH DATA

(DATE)

Rep. Robert G. Holbrook, Chairman
Oil Fund Disbursement Board
c/o NHDES Waste Management Division
6 Hazen Dr. P.O. Box 95
Concord, NH 03302-0095
Attn: Timothy R. Denison

Re: (TOWN), (SITE NAME), Request for Waiver of Odb 401.36(a)(7) - Backfill Weigh Data
(DES NO. #####)

Dear Rep. Holbrook,

On behalf of (SITE OWNER), (APPLICANT/CONTRACTOR) hereby requests a waiver of Odb 401.36(a)(7), which requires that the site owner provide certified weigh data for backfill material brought on site to replace contaminated material disposed off-site. Pursuant to Odb 401.40, this waiver is sought under the following circumstances:

- 1.) A waiver of Odb 401.36(a)(7) is necessary because scales are not maintained by the operator of the borrow area where the backfill material was obtained, and a source of suitable borrow material where scales are maintained, was not located within reasonable distance of the project (site) location. If backfill material was obtained from a location with scales the cost to the site owner for that material would have been greater.
- 2.) In lieu of certified backfill weigh data, the owner requests that the Board accept (APPLICANT/CONTRACTOR'S) certification that (1) the material was not obtained from a borrow location owned by the site owner, and (2) the quantity of backfill material did not exceed the quantity of contaminated soil removed from the site. The quantity may be certified because (APPLICANT/CONTRACTOR) either oversaw the work of others who transported the material, or we provided the transportation with our own equipment. The total number of truckloads was (NUMBER) at (NUMBER) cubic yards per load, for a total of (NUMBER) cubic yards. At (TONS) per cubic yard

conversion factor, the total calculated tonnage brought to the site was (TONS). The total tonnage transported off site and disposed was (TONS).

- 3.) Granting this waiver request would be consistent with the intent of the statute and rules, because the owner is entitled to reimbursement for corrective action costs for work requested and approved by NHDES. Further, the backfill material costs do not exceed the prevailing market rate for such material and the owner has not benefited from the work other than for the restoration of (HIS/HER) property to its pre-release condition. In-kind property restoration costs are reimbursable under the provisions of the fund rules.

Attached to this letter, please find load slips and other pertinent data related to the waiver request. If you have any questions, please call the undersigned at (AREA CODE) (PHONE NUMBER).

Sincerely,
(NAME)
(APPLICANT/CONTRACTOR)

Attachments: Load Slips
(OTHER)
cc: (OWNER)